HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.13887 of 2005

Dated: 18th August, 2005

Between:

M.Prakash Kumar S/o.Someswararao, Prop: Chandra Waters,

Eluru, West Godavari District.

…Petitioner

and

1. District Collector, Eluru, West Godavari District and others.

…Respondents

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Writ Petition No.13887 of 2005

ORDER:

1. This writ petition has been filed by M.Prakash Kumar with a prayer to issue a writ, order or direction more particularly one in the nature of writ of Mandamus directing the respondents not to interfere with the business of the petitioner in sale of plain drinking water.

2. The case of the petitioner as disclosed from the affidavit filed in support of the writ petition is:- He started selling plain drinking water to the public under self-employment scheme. The plain water does not come under the purview of the Prevention of Food Adulteration Act, 1954 (for short, 'the Act') and therefore, Bureau of Indian Standards certificate is not required to be obtained by the petitioner for sale of plain water. The second respondent-Mandal Revenue Officer, Eluru, West

Godavari District, issued summons directing his appearance on 13.06.2005 for enquiry under Section 133(1)B of the Act for not possessing Bureau of Indian Standards certificate for sale of plain water. He appeared before him on 13.06.2005 and gave a statement. But, the second respondent has not passed any orders on the proceedings initiated by him. Since, the Mandal Revenue Officer, Eluru, West Godavari District and the Food Inspector, Eluru, are interfering with his day-to-day business, he approached this Court by invoking the jurisdiction under Article 226 of the Constitution of India.

3. The third respondent filed counter affidavit. It is stated in the counter affidavit that the Central Government in exercise of powers conferred under Section 2(V)(c) of the Act declared the packaged drinking water as a food item vide notification GSR No.202 (E), dated 21.03.2001. The Government of India in exercise of powers conferred under Section 23 of the Act in consultation with the Central Committee for Food Standards amended the Prevention of Food Adulteration Rules, 1955 (for short, 'the Rules') vide G.S.R.No.759(E) and 760(E) and inserted sub-rules 28 and 29 to Rule 49 of the Rules. Whereunder it has been made mandatory to get a certificate mark (ISI) from Bureau of Indian Standards for manufacture or sale of packaged drinking water or mineral water. In nutshell the case of the third respondent is that sale of packaged drinking water without obtaining a certificate from Bureau of Indian Standards is illegal and unjust and contrary to the provisions of Rule 49 {sub-rules (28) and (29)} of the Rules. I deem it appropriate to refer paras.7 and 8 of the counter affidavit and they are thus:

> "7. It is submitted that the other contentions of the petitioner stating the action of respondents is deprived of his legitimate right of livelihood is not tenable because every right is subject to reasonable restriction imposed by the Constitution of India in order to protect health of people as required under Article 47. In view of the language employed in Article 47 of the Constitution of India, it is the primary duty of the State shall regard the raising of the level of nutrition and the standard of living of the people and improvement of public health. The said Article reads as follows:
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> *"Duty of the State to raise the level of nutrition and the standard of living and to improve public health.- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health".*
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> 8.It is submitted that, since the petitioner miserably failed to obtain ISI

certification mark for sale of packaged drinking water (Chandra Brand) as required under Prevention of Food Adulteration Act, the action taken by the respondents is in accordance with law and in the interest of public health."

4. Heard learned counsel appearing for the petitioner and learned Government Pleader for Revenue appearing for the respondents 1 to 3.

5. Learned counsel appearing for the petitioner submits that the petitioner is selling plain water and not packaged drinking water as defined under the Rules. He further submits that the issue whether plain water is a food item or not came up for consideration before the Division Bench of this Court in W.P.No.5086 of 2001 and batch wherein it has been held that only the packaged drinking water which is subjected to treatments, namely, decantation, filteration, combination of filteration, acrations, filteration with membrane filter, depth filter, cartridge filter, activated carbon filteration, demineralization, remineralisation, reverse osmosis and packed is covered under the packaged drinking water.

6. Learned Government Pleader for Revenue appearing for the respondents submits that the petitioner is misleading the public by selling plain water for human consumption and therefore, the respondents have got every right to check the business of the petitioner in the interest of public.

7. It is no more in dispute that what is covered under the Act is packaged drinking water. A-33 of Appendix – B defines "packaged drinking water" (other than mineral water) means water derived from any source of potable water which is subjected to treatments, namely, decantation, filteration, combination of filteration, acrations, filteration with membrane filter, depth filter, cartridge filter, activated carbon filteration, demineralization, remineralisation, reverse osmosis and packed.

8. It is the specific case of the petitioner that he has been selling only plain water and not packaged drinking water as defined under the Rules, and therefore, the respondents cannot interfere with his business. Such is the assertion of the

petitioner, respondents cannot interfere with the business of the petitioner so long as he sells plain water. But, at the same time, the respondents have got every right to check the business of the petitioner in case the petitioner sells packaged drinking water as defined under the Rules.

9. With the above observation, the writ petition is disposed of. No costs.

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B.SESHASAYANA REDDY, J.

Dated: 18th August, 2005.

Note:

Issue C.C. within a week.

B/O

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